



TMA Privacy and Civil Liberties Office Information Paper



AMENDMENT OF PROTECTED HEALTH INFORMATION

HIPAA Privacy ♦ February 2012

I. Supporting Policies for Amendment of Protected Health Information

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR 164.526(a)) establishes requirements regarding amending protected health information (PHI).
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, Chapter 12) implements the above provision of the HIPAA Privacy Rule within the Military Health System (MHS).

II. Definitions Associated with Amendment of Protected Health Information

- A. Covered Entity: A health plan or a healthcare provider within the MHS that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- B. Designated Record Set: A group of records that includes:
 - 1. Medical and billing records maintained by or for a healthcare provider.
 - 2. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - 3. Records used, in whole or in part, by or for the covered entity to make decisions about individuals.
- C. Disclosure: The release, transfer, provision of access to, or revealing in any other manner of PHI outside the entity holding the information.
- D. Military Health System (MHS): All DoD health plans and all DoD healthcare providers that are, in the case of institutional providers, organized under the management authority of, or in the case of covered individual providers, assigned to or employed by TMA, the Army, the Navy, or the Air Force.
- E. Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium, except as otherwise contained in employment records held by a covered entity in its role as an employer.

- F. Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

III. Guidance Regarding Amendment of Protected Health Information

- A. Right to Amend. Under paragraph C12.1.1 of DoD 6025.18-R, an individual has the right to request a covered entity amend their PHI for as long as it is maintained in a designated record set.
- B. Right to Deny. A covered entity may deny an individual's amendment request, if it is determined that the subject PHI:
1. Was not created by the covered entity, unless the individual provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment.
 2. Is not part of the designated record set.
 3. Would not be available for inspections under C11; or
 4. Is accurate and complete.
- C. Request for Amendment.
1. If the individual is informed in advance, the covered entity may require a request for amendment to be in writing and contain supportive reasoning.
 2. The covered entity must act on the individual's request – grant or deny – no later than 60 days after receipt of the request.
 - a. If the covered entity denies any part of the requested amendment, it shall provide the individual with a written response,
 - b. If a delay occurs, the covered entity may have one 30-day extension and it must provide a written statement of the reason for the delay and the date the request will be completed.
- D. Accepting the Amendment. If the covered entity accepts the requested amendment in whole or in part:
1. The covered entity must make the appropriate amendment to the subject PHI and attach or provide the location of the amendment.
 2. Within a reasonable timeframe, the covered entity should make reasonable efforts to inform all persons, including business associates, who might possess the amended PHI.
 3. A covered entity that is informed by another covered entity of an amendment to an individual's PHI must amend the PHI in the designated record set.
- E. Denying the Amendment. If the covered entity denies the requested amendment in whole or in part, the covered entity must provide the individual with the following information, in plain language:
1. The reason for the denial.
 2. The individual's right to submit a written statement disagreeing with the denial and an explanation on how to do so.

3. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the covered entity provide the request and denial for the amendment with any future disclosures of the subject PHI; and
 4. A description of how the individual may complain to the covered entity or the Secretary of the Department of Health and Human Services, and include the contact information for the person or office designated to deal with such complaints within the covered entity.
- F. Statement of Disagreement. An individual is permitted to submit a written statement to the covered entity disagreeing with all or any part of the denial and the basis of such disagreement. A covered entity may reasonably limit the length of the statement.
- G. Rebuttal Statement. A covered entity may prepare a written rebuttal to the individual's statement of disagreement. If such a rebuttal is prepared, a copy must be provided to the individual.
- H. Future Disclosures. With any subsequent disclosure of the subject PHI:
1. If a statement of disagreement was submitted, the covered entity shall include the individual's amendment request, the covered entity's denial of the request, the individual's statement of disagreement, if any, and the covered entity's rebuttal, if any, or an accurate summary of such information.
 2. If a statement of disagreement was not submitted, the covered entity shall include the individual's request for amendment and its denial, or an accurate summary of such information, if it is requested by the individual.
 3. If the disclosure is made under Title 45, Code of Federal Regulations, "Public Welfare," Parts 160 - 164, and does not permit the additional material to be included, the covered entity may separately transmit the material, as applicable, to the recipient.
- I. Documentation. A covered entity must document the titles of the persons or offices responsible for receiving and processing requests for amendments by individuals, and retain the documentation associated with such requests.